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REPORT

From: General Secretariat of the Council
To: Delegations
Subject: Code of Conduct Group (Business Taxation)
- Report to the Council

Monitoring fiche: Ireland - IE017 - Digital games relief (tax credit) [2023 CoCG decision]

I. Background

1. In 2023, the Group decided that the Irish tax credit for Digital Games (IE 017 Digital Games Relief) should be considered not harmful and that the effects of the use of subcontractors should be monitored.
2. We recall that the measure allows for a (refundable) tax credit in Ireland based on expenditure incurred¹, among which subcontractor payments, i.e., payments to companies outside Ireland. “Qualifying expenditure” is defined as the total expenditure incurred by the company on the design, production and testing of a digital game, including certain subcontractor payments.

¹ The tax credit per digital game is 32% of the lowest of:
- eligible expenditure (i.e. qualifying expenditure in the EU/ EEA),
- 80% of total qualifying expenditure (qualifying expenditure worldwide), or
- EUR 25,000,000.

On this basis, the tax credit is capped at EUR 8,000,000 per digital game (32% of EUR 25,000,000).

If the eligible expenditure (i.e., expenditure defrayed in the EU/EEA) is 0, the tax credit will be 0 as well, irrespective of the qualifying expenditure (i.e. total expenditure defrayed worldwide). This means that an eligible company cannot defray all expenses outside the EU/EEA and still benefit from a tax credit in Ireland.

The portion of the qualifying expenditure that is expended in the EU/EEA is referred to as “eligible expenditure”.

3. It was acknowledged that there are certain anti-abuse provisions in place, such as limitations on activities subject to subcontracting and limitations on the amount of expenditure qualifying for a tax credit, which should establish a direct link between activities carried out by a subcontractor and the subcontractor payments that may qualify for a tax credit.
4. Yet, as the development of a digital game is considered a highly mobile activity, to diminish the risk of subcontractor payments leading to a situation of double benefits, it is necessary to ensure that the subcontractor payments which qualify for a tax credit is income subject to taxation in the state of the subcontractor.
5. However, it was noted that the identified risks are limited by (i) the restrictions (activity and expenditure ceiling) on subcontractor payments qualifying for a tax credit, (ii) the temporary application of the measure which is due to run only until 31 December 2025, and (iii) the Irish Department of Finance estimations on the cost of the measure anticipating that it would only amount to EUR 6,000,000 annually.

II. Preliminary assessment

6. This year’s exercise is the first monitoring exercise and the Irish authorities communicated the relevant data for tax years 2022 and 2023. The data is provisional as statistics for these years may be subject to revision in future, due to the length of time available to make a claim in respect of this relief.
7. In either of the years (2022 or 2023), the number of beneficiaries was below ten, all of them being resident companies.
8. The overall amount of the tax benefits granted under the regime was lower than EUR 100,000 in 2022 and rose to approximately EUR 800,000 in 2023. Based on the data communicated, it can be noted that the increase in the amount of the tax benefit in 2023 reflects the increase in the amount of the worldwide qualifying expenditure (from below EUR 100,000 in 2022 to below EUR 4 million in 2023).

9. Where the qualifying expenditure significantly exceeds the eligible expenditure, the amount of payments to subcontractors in non-EEA jurisdictions should be communicated. Yet, Ireland was not able to disclose it due to the low number of claimants and the domestic obligation to protect confidential taxpayer information (restriction regarding the level of detail they can provide due to the low numbers of beneficiaries).
10. To indicate that there is no risk of subcontractor payments leading to a situation of double benefits, Ireland confirmed that no payments were made to jurisdictions included on the EU list, nor were any payments made to jurisdictions identified as no or only nominal tax jurisdictions by the OECD Forum on Harmful Tax Practices.

III. Conclusions

11. It is difficult to draw a final conclusion regarding the actual effects of the measure and its impact on the location of business activity among Member States, given that the data for 2022 and 2023 is for the time being provisional and the amount of payments to subcontractors in non-EEA jurisdictions could not be disclosed.

IV. Follow-up

12. The Group agreed that the monitoring of the measure should continue.
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Ireland – IE017 - Digital games relief (tax credit) [2023 CoCG decision]

Ireland – IE017 - Digital games relief (tax credit) ²	2022	2023	2024 (data if available)
- number of beneficiaries,	< 10	< 10	Not yet available
- overall amount of tax benefits granted under the regime,	< EUR 100,000	Approximately EUR 800,000	Not yet available
- how many of the beneficiaries are: resident, non-resident or (directly or indirectly) foreign owned companies,	resident companies: < 10 of the beneficiaries are. non-resident companies: 0. foreign owned companies: 0.	< 10 of the beneficiaries are resident companies. 0 beneficiaries are non-resident companies. 0 beneficiaries are foreign owned companies.	Not yet available
- the amount of tax benefits per category of company (resident, non-resident and foreign owned),	resident companies: < EUR 100,000. non-resident companies: nil. foreign-owned companies: nil.	resident companies: approximately EUR 800,000. non-resident companies: nil. foreign-owned companies: nil.	Not yet available
- the amount of qualifying (worldwide) expenditure,	< EUR 100,000	< EUR 4 million	Not yet available
- the amount of eligible (intra EEA) expenditure, and	< EUR 100,000	< EUR 3 million	Not yet available
- where the qualifying expenditure significantly exceeds the eligible expenditure, the amount of subcontractor payments to non-EEA jurisdictions.	Nil	Unable to disclose due to low number of claimants and the obligation to protect confidential taxpayer information.	Not yet available

² Statistics for these years may be subject to revision in future, due to the length of time available to make a claim in respect of this relief.